

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Knox Analyst: Colin Stevens Bill Number: AB 1063  
Related Bills: \_\_\_\_\_ Telephone: 845-3036 Amended Date: 8/24/98  
Attorney: Doug Bramhall Sponsor: City of Los Angeles

**SUBJECT:** FTB Disclosure of Tax Information to Charter Cities if Written Agreement Exists

### SUMMARY OF BILL

Under the Administration of Franchise and Income Taxes (AFITL), this bill would permit the Franchise Tax Board (FTB) to disclose California income tax information to tax officials of charter cities in California. Disclosure would be under a written agreement and would be limited to (1) information essential for tax administration purposes, (2) information regarding only taxpayers with a business or residence-based business located within the charter city, and (3) a taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city. FTB would be able to provide information only for returns filed for taxable or income years that commence on or after January 1, 1998.

The charter city first would be required to certify to the FTB that taxpayers in the business activity codes for which information is requested are subject to tax under the city's ordinance. However, disclosure of information on individuals self-identified as engaging in business activity codes 6883 (authors and artists), 9597 (motion picture and video production), or 9611 (theatrical performers, musicians, agents, producers and related services) would be prohibited.

### SUMMARY OF AMENDMENT

The August 24, 1998, amendments specify that FTB would not be able to provide information for returns filed for taxable or income years that commence on or before December 31, 1997.

The August 20, 1998, amendments removed the provisions of the bill that would have added certain manufacturers of custom or prepackaged computer software to the Manufacturers' Investment Credit (MIC) and inserted the provisions discussed in this analysis.

### EFFECTIVE DATE

This bill would be effective on January 1, 1999, and would apply to returns filed for taxable or income years beginning on or after January 1, 1998.

### LEGISLATIVE HISTORY

AB 701 (1997), AB 1881 (Stats. 1993, Ch. 891), SB 1255 (91/92).

### Board Position:

_____ S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ X PENDING

### Department Director

### Date

Gerald H. Goldberg

8/31/98

## BACKGROUND

In 1995, the City of Los Angeles, as part of a business tax amnesty program, contacted the Franchise Tax Board (FTB) to gain information on unlicensed businesses operating in the city and filing state taxes, but failing to pay appropriate city taxes. Because of confidentiality restrictions discussed in specific findings, the FTB was unable to provide information to the city. However, the FTB was able to receive information from the city, identify businesses paying state but not city tax, and notify those businesses of the city's amnesty program. The FTB provided no taxpayer information to the city as such action was not authorized under state law.

Currently, any local government requesting information is required to send an affidavit to both the FTB and taxpayer to request information. Cities do not know the identity of taxpayers operating unlicensed businesses and, consequently, do not have the information necessary to provide such an affidavit.

## SPECIFIC FINDINGS

**Current federal law** provides rules for the disclosure of federal tax information. Federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal agencies and state agencies, such as the FTB. A return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code. Where an unauthorized disclosure has occurred, taxpayers whose privacy has been invaded may bring a civil suit for damages and may recover the greater of \$1,000 or the amount of the actual damages sustained as a result of the disclosure. Punitive damages also may be recovered if the disclosure was willful or grossly negligent.

**Current state law** prohibits the disclosure of any taxpayer information except as specifically authorized by statute. Any FTB employee or member responsible for release of state or federal state tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

**California law**, in limited instances, permits the FTB to release individual tax return information to the following: legislative committees, the Attorney General, the California Parent Locator Service, the directors of Social Services and Health Services, California tax officials, such as BOE, EDD, the Controller, and the Department of Motor Vehicles. Agencies must have a specific reason for requesting the information, including tax investigation, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

Similar statutory provisions exist to protect the confidentiality of tax information collected by the Board of Equalization (BOE) and Employment Development Department (EDD).

**California law** permits the FTB to release tax information according to tax return sharing agreements with the IRS, the Multistate Tax Commission (MTC), and taxing authorities of other states. The exchange must relate to the enforcement of tax

laws and the information must not be made public. Shared information includes sales tax, income tax, and corporation tax return data. The tax return information relating to multi-state and multi-national tax audits is shared with the MTC.

**Current state law** provides that the FTB may respond to requests from local taxing agencies to furnish information on a taxpayer. The request must be in the form of an affidavit signed under the penalty of perjury stating that the purpose of the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's duties.

**Current state law** requires each city which maintains a computerized recordkeeping system or has access to such a system and which assesses a business tax to annually furnish to the FTB a list of all businesses subject to tax in the preceding year. This list must include:

- business name,
- address,
- federal employer identification number,
- type of business activity,
- amount of annual business tax, and
- any other information as the FTB may require.

California has two kinds of cities: charter cities and general law cities. A charter city is one that receives its powers from the state Constitution. Charter cities may make their own ordinances and regulations, provided those do not conflict with state law. With some exceptions, general law cities may use only those powers that are specifically enumerated by the state. However, general law cities may levy any tax which may be levied by any charter city.

**AB 1063** would allow the FTB to enter into an agreement for the exchange of confidential tax information with a charter city, thereby allowing the FTB to legally provide tax information to charter cities. The tax information that could be provided would be limited to (1) information essential for tax administration purposes, (2) information regarding only taxpayers with a business or residence located within the charter city, and (3) a taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city.

The FTB could provide information only after certification by the charter city that taxpayers in the business activity codes for which information is requested are subject to tax under the city's ordinance. FTB could provide information only for returns filed for taxable or income years that commence on or after January 1, 1998.

However, the FTB would be prohibited from disclosing information on individuals self-identified as engaging in federal principal business activity code 6883 (authors and artists), 9597 (motion picture and video production), or 9611 (theatrical performers, musicians, agents, producers and related services).

### Policy Considerations

This bill would allow the FTB to furnish to charter cities information similar to that which cities currently provide to the FTB.

California's voluntary compliance tax system relies on taxpayers accurately reporting their income. If taxpayers perceive that tax information is being shared or compromised, the voluntary compliance system may be jeopardized.

### Implementation Considerations

Tax forms for taxable and income years 1998, filed during the 1999 processing year, will contain six-digit activity codes based on the North American Industry Classification System. As of August 25, 1998, the listing of codes to be used has not been finalized, but the codes for 1998 and after will be different from current four-digit codes. Therefore, business activity codes 6883, 9597, or 9611 would not be used on tax forms, and taxpayers could not identify themselves as engaging in those lines of business.

## FISCAL IMPACT

### Departmental Costs

The department's costs to administer this bill are not anticipated to be significant as the FTB is reimbursed for costs incurred to provide information to another taxing authority.

### Tax Revenue Estimate

This bill would have no identifiable revenue effect on state income tax receipts.

## BOARD POSITION

Pending.